

JUN 11 1991

CERTIFIED MAIL

Dear Sir or Madam:

We have considered your application for recognition of exemption from Federal income tax under section 501(c)(4) of the Internal Revenue Code and have determined that you do not qualify for tax exemption under that section. Our reasons for this conclusion and the facts on which it is based are explained below.

The purposes of your organization according to your Certificate of Incorporation are to "provide for the maintenance, preservation and control of the common elements within that certain tract of property described in a deed from [REDACTED] to [REDACTED], recorded or intended to be recorded in the Office of the Register of [REDACTED] County, and to promote the health, safety and welfare of the residents within the above described property."

The activities of the organization will be to preserve the appearance of the townhouse development, to maintain parking, sidewalks and common areas for the use of residents and to collect assessment fees for all the expenses of the association.

Your income is derived from membership assessments.

Expenses are shown for taxes, maintenance and fees.

Section 501(c)(4) of the Code provides for the recognition of civic leagues, social welfare organizations, or other organizations not organized for profit, but operated exclusively for the promotion of social welfare.

Section 1.501(c)(4)-1(a)(2)(i) of the Income Tax Regulations provides that an organization is operated exclusively for the promotion of social welfare if it is primarily engaged in promoting in some way the common good and general welfare of the people of the community. An organization embraced within this section is one which is operated for the purposes of bringing about civic betterments and social improvements.

Code	Initiator	Reviewer	Reviewer	Reviewer	Reviewer	Reviewer	Reviewer
Surname	[REDACTED]	[REDACTED]					
Date	5/22/91	6/6/91					

Revenue Ruling 72-102, published in Cumulative Bulletin 1972-1, page 149, states that a non-profit organization formed to preserve the appearance of a housing development and to maintain streets, sidewalks, and common areas for the use of residents is exempt under section 501(c)(4) of the Code. Membership is required of all owners of real property in the development and assessments are levied to support the organization's activities. It was held that by maintaining the property normally maintained by municipal governments, the organization served the common good and general welfare of the people of the community.

Revenue Ruling 74-99, published in Cumulative Bulletin 1974-1 on page 111 modified Revenue Ruling 72-102 by stating guidelines under which a homeowners association could qualify for exemption under section 501(c)(4) of the Code. One guideline is that a homeowners association must serve a community which bears a reasonably recognizable relationship to an area ordinarily identified as governmental in order to qualify under Code section 501(c)(4).

This ruling reads in part: "A community within the meaning of section 501(c)(4) and the Regulations is not simply an aggregation of homeowners bound together in a structural unit formed as an integral part of a plan for the development of a real estate division and the sale of homes therein. Although an exact delineation of the boundaries of a "community" contemplated by section 501(c)(4) is not possible, the term as used in that section has traditionally been construed as having reference to a geographical unit bearing a reasonably recognizable relationship to an area ordinarily identified as a governmental subdivision or a unit or district thereof."

The area served by your activities consists of structural units formed as an integral part of a residential housing development plan. Such an area does not constitute a "community" within the meaning of Code section 501(c)(4) and the underlying Regulations.

Revenue Ruling 74-99 also states that "a homeowners association must not conduct activities directed to the exterior maintenance of private residences and that the common areas or facilities must be for the use and enjoyment of the public."

Revenue Ruling 74-99 states that Revenue Ruling 72-102 "...was intended only to approve ownership and maintenance by a homeowners association of such areas as roadways and parklands, sidewalks and street lights, access to, or the use and enjoyment of which, is intended to members of the general public, as distinguished from controlled use or access restricted to the members of the homeowners association..."

Your common areas are not open to or for the use and enjoyment of the general public.

[REDACTED]

You state in your response that "the townhouse owners are the only members of the Association and become members upon closing on their properties. Membership is not available to the community as a whole."

Your common areas are grass areas, parking areas and sidewalks of the townhouses. The common areas are not for the use and enjoyment of the general public. They are only for the use of the townhouse owners and their guests.

You state that "the Association's services only benefit the townhouse owners and do not benefit the entire community."

One of the purposes of Revenue Ruling 74-99 is to preclude recognition of exemption of homeowners associations that serve private rather than public interests.

Based on the information submitted and applicable law cited above, we conclude that you are primarily organized and operated to provide services for the private benefit of your members and not primarily for promoting in some way the common good and general welfare of the people of the community as a whole. Therefore, you do not qualify for exemption from Federal income tax as an organization described in section 501(c)(4) of the Code.

In accordance with this determination, you are required to file Form 1120 for Federal income tax purposes.

Your attention is called to Code section 528, which provides certain procedures by which a qualifying homeowners association may elect to be treated as a tax exempt organization. The enclosed Publication 588 describes the requirements for exemption under section 528.

If you do not accept our findings, we recommend that you request a conference with a member of our Regional Office conference staff. Your request for a conference should include a written appeal giving the facts, law, and any other information to support your position as explained in the enclosed Publication 892. You will then be contacted to arrange a date for a conference. The conference may be held at the Regional Office, or if you request, at any mutually convenient District Office. If we do not hear from you within 30 days from the date of this letter, this determination will become final.

Appeals submitted which do not contain all the documentation required by Publication 892 will be returned for completion.

[REDACTED]

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely yours,

[REDACTED]

District Director

Enclosures: Publication 892  
Publication 588